TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 599.

THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS & COMPANY, APPELLANTS,

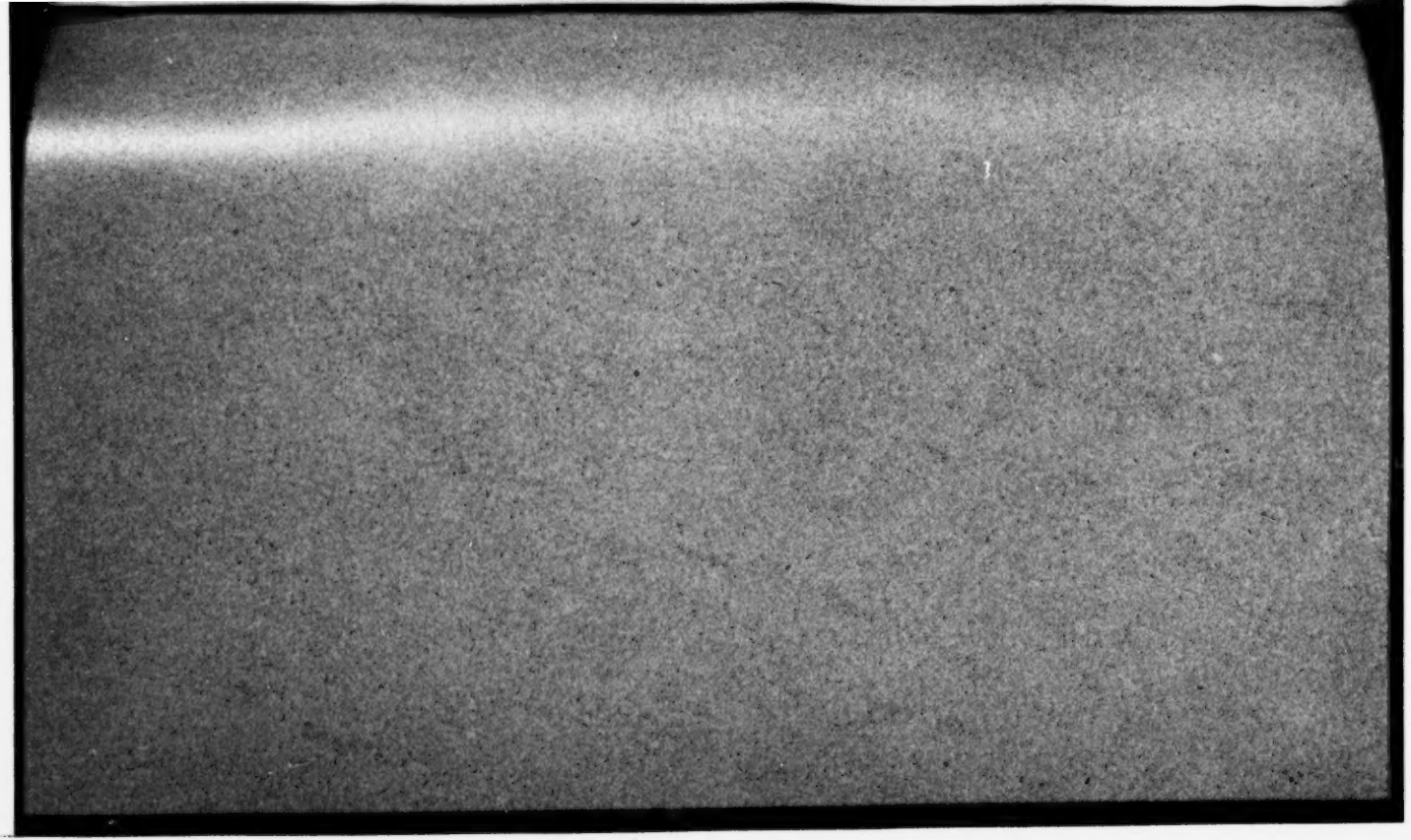
vs.

JOHN P. KLUG AND CHARLES H. WHEELER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED MARCH 17, 1902.

(18,452.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 1, 1902.

1 *Pleas in the District Court of the United States for the District of Colorado, Sitting at Denver.*

Be it remembered that heretofore and on, to wit, the 9th day of September, A. D. 1901, came the First National Bank of Denver, Colorado, the First National Bank of York, Nebraska, and Harris and Company, and filed in said court, their petition for adjudication in bankruptcy against John P. Klug.

And the said petition is in words and figures as follows, to wit:—

Creditors' Petition.

To the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado:

The petition of the First National Bank of Denver, Colorado, and the First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, respectfully shows:

That John P. Klug, of Weld county, Colorado, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business and resided at or near Evans, in the county of Weld and State and district aforesaid, and owes debts to the amount of $1,000.

2 That your petitioners are creditors of said John P. Klug having provable claims amounting in the aggregate, in excess of securities held by them to the sum of $500. That the nature and amount of your petitioners' claims are as follows: Unpaid balances due on three promissory notes; $40,596.74 balance due on note for $58,527.90, $1,807.48, balance due on note for $4,160.00 and $15,992.16 balance due on note for $16,713.67, all made by said John P. Klug, and held and owned by your petitioners respectively in order as above named, and all past due and unpaid.

And your petitioners further represent that said John P. Klug is insolvent, and that within four months next preceding the date of this petition the said John P. Klug committed an act of bankruptcy, in that he did heretofore, to wit, on the twentieth (20th) day of May, A. D. 1901, then being insolvent, transfer and convey to Charles H. Wheeler of Greeley, Weld county, Colorado, by chattel mortgage recorded in the office of the county clerk and recorder of Weld county, Colorado, on the third day of June, A. D. 1901, eighty-one (81) head of cattle, for the alleged consideration of $2,000.00; and did heretofore, to wit, on the 14th day of May, A. D. 1901, then being insolvent transfer and convey to Charles H. Wheeler of Greeley, Weld county, Colorado, by warranty deed recorded in the office of the county clerk and recorder of Weld county, Colorado, on the 18th day of May, A. D. 1901, three hundred and twenty acres of land with water rights situate in Weld county, Colorado, for the

3 alleged consideration of $2,500.00; and did heretofore, to wit, on the 11th day of May, A. D. 1901, then being insolvent,

transfer and convey to George W. Miller of Denver, Arapahoe county, Colorado, by chattel mortgage recorded in the office of the county clerk and recorder of Weld county, Colorado, on the 18th day of May, A. D. 1901, two hundred (200) head of horses, for the alleged consideration of $5,500.00; all with the intent to hinder, delay, or defraud his creditors or some of them, and while being insolvent, with the intent to prefer such creditors over his other creditors.

Wherefore your petitioners pray that service of this petition, with a subpœna, may be made upon John P. Klug as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

THE FIRST NAT. BANK OF DENVER, COLO.,
By G. E. ROSS-LEWIN, *Vice-Pres't*,
THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
By GEO. W. POST, *President*,
HARRIS AND COMPANY,
By E. K. HARRIS, *Treasurer*,
Petitioners.

[Seal First Nat'l Bank.]

Attest: W. C. THOMAS, *A. C.*

HODGES, WILSON AND HODGES, *Attorneys.*

UNITED STATES OF AMERICA, *District of Colorado*, } ss:

G. E. Ross-Lewin, as the vice-president and on behalf of the First National Bank of Denver, Colo., and E. K. Harris as the
4 treasurer, and on behalf of Harris and Company of Denver, Colo., being two of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by said corporations are true.

Before me Eugene Elder, a notary public, this 6th day of September, A. D. 1901.

[NOTARIAL SEAL.] EUGENE ELDER,
Notary Public (Official Character) within and for the County of Arapahoe and State of Colorado.

My commission expires M'ch 22, 1905.

UNITED STATES OF AMERICA, *District of Alaska*, } ss:

George W. Post, as the president, and on behalf of the First National Bank of York, Nebraska, being one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition subscribed by said The First National Bank of York, Nebraska, are true.

Before me, William W. Wyckoff, a notary public, this 7th day of September, 1901.

[NOTARIAL SEAL.] WILLIAM W. WYCKOFF,
Notary Public (Official Character) within and for York County, State of Nebraska.

My commission expires June 8, 1906.

5 (Endorsed:) No. 622—United States district court, district of Colorado—In bankruptcy—In the matter of John P. Klug, of Evans, county of Weld, State of Colorado—Creditors' petition—Filed at 10.10 o'clock a. m., this 9th day of Sept. A. D. 1901. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioners.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. In Bankruptcy. Answer.

Now comes Charles H. Wheeler, and for answer to the petition of the First National Bank of Denver, Colorado, and the First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, to have John P. Klug declared an involuntary bankrupt, and for answer to said petition, alleges:

That he is the Charles H. Wheeler mentioned in said petition as a creditor of John P. Klug; that he is a creditor of the said John P. Klug in an amount exceeding two thousand dollars ($2,000).

The said Charles H. Wheeler further answering admits that John P. Klug of Weld county, Colorado, has for the greater portion of six months next preceding the date of the filing of said petition had a principal place of business and residence at or near Evans in Weld county, State and district of Colorado, and that he owes

6 debts to the amount of a thousand dollars.

Denies upon information and belief that the petitioners mentioned in said petition are creditors of the said John P. Klug having provable claims amounting to the aggregate, in excess of securities held by them, of five hundred dollars ($500), and alleges the fact to be that upon an accounting between the said petitioners and the said John P. Klug for the securities and property received by them, that there will be found to be no indebtedness whatsoever from the said John P. Klug to the said petitioners.

Denies upon information and belief that the said John P. Klug is insolvent, or that within four months next preceding the date of the filing of said petition, the said John P. Klug committed any act or acts of bankruptcy whatsoever.

Admits that on or about the 20th day of May, 1891, that said John P. Klug conveyed to Charles H. Wheeler by chattel mortgage

81 head of cattle to secure the payment of two thousand dollars, but expressly denies that said John P. Klug was insolvent at the time of making said chattel mortgage, or that the said mortgage was made to hinder, delay, or defraud any creditor or creditors of the said John P. Klug, or with intent to prefer the said Charles H. Wheeler over any other creditor or creditors.

Admits that the said John P. Klug conveyed to the said Charles H. Wheeler by warranty deed on the 14th day of May, 1891, 320 acres of land with the water rights, in Weld county, for the
7 consideration of twenty-five hundred dollars ($2,500) but expressly denies that the said John P. Klug was insolvent at the time of such conveyance, or that said conveyance was made to hinder, delay, or defraud any or all of his creditors, or that the same was made with the intent to prefer one creditor over another.

Admits that the said John P. Klug by chattel mortgage dated on the 11th day of May, 1891, conveyed to George W. Miller two hundred head of horses to secure the sum of fifty-five hundred dollars ($5,500) but expressly denies that the said John P. Klug was insolvent at the time of making said mortgage, or that the same was made with intent to hinder, delay, or defraud any creditor or creditors of the said John P. Klug or that the same was made with intent to prefer one creditor over another.

II.

And the said Charles H. Wheeler for a second answer and defence to said petition alleges: that he is now and was at the time of the filing of the petition for involuntary bankruptcy in this matter a creditor of said John P. Klug in an amount in excess of two thousand dollars; that the said John P. Klug is now and was at the time of the filing of said petition, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil, and therefore cannot be adjudged an involuntary bankrupt under the purview of the statute providing for involuntary bankruptcy.

8 C. C. BROWN,
Attorney for the said Charles H. Wheeler.
DANIEL SAYER,
Of Counsel.

UNITED STATES OF AMERICA, }
District of Colorado, } ss:

Charles H. Wheeler being duly sworn deposes and says; that he has read the foregoing answer and knows the contents thereof, and hereby makes solemn oath that the statements therein contained are true of his own knowledge, except as to the matters and things therein alleged upon information and belief, and that as to those matters he believes it to be true.

CHARLES H. WHEELER.

Subscribed and sworn to before me this 30th day of September, A. D. 1901.

My commission expires Sept. 28th, 1902.

[SEAL.] CLARENCE T. NEILL,
Notary Public.

(Endorsed:) 622—In the district court of the United States for the district of Colorado—In the matter of John P. Klug—Answer of Charles H. Wheeler, a creditor to petition for adjudication.—Filed Oct. 4, 1901—4.10 p. m. Charles W. Bishop, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado. }

In the District Court of the United States for the District of Colorado.

9 In the Matter of JOHN P. KLUG. In Bankruptcy.

Amendment to Creditors' Petition.

Now come The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, heretofore filed in the above-entitled cause on the 9th day of September, A. D. 1901, and pursuant to leave of this court first had and obtained, and as and for an amendment to their said petition, allege as follows: That the said John P. Klug is now, and was at the time of filing the creditors' petition herein, and has been for three and one-half years last past, engaged chiefly in the business of dealing in and buying and selling cattle and horses at or near Evans, Weld county, Colorado, and is not now, and was not at the time of filing the creditors' petition herein, and has not been for three and one-half years last past, a wage-earner nor engaged chiefly in farming or the tillage of the soil.

Wherefore your petitioners pray that the said John P. Klug may be adjudged by the court to be a bankrupt within the purview of the acts of Congress relating to bankruptcy, as they have heretofore prayed in their said petition.

THE FIRST NAT. BANK OF DENVER,
By G. E. ROSS-LEWIN, *Vice-Pres't.*
THE FIRST NATIONAL BANK OF YORK,
10 By GEO. W. POST, *President.*
HARRIS AND COMPANY,
By E. K. HARRIS, *Treasurer.*

HODGES, WILSON AND HODGES, *Attorneys.*

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

G. E. Ross-Lewin, as the vice-president, and on behalf of the First National Bank of Denver, Colorado, and E. K. Harris, as the treasurer, and on behalf of Harris and Company of Denver, Colorado, being two of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing amendment to their petition, subscribed by said The First National Bank of Denver, Colorado, and Harris and Company of Denver, Colorado, are true.

Before me C. S. Haughwout this 23d day of October, A. D. 1901. My commission expires February 7, 1904.

[NOTARIAL SEAL.] C. S. HAUGHWOUT,
Notary Public.
(Official character.)

UNITED STATES OF AMERICA, *District of Nebraska,* } ss:

George W. Post as the president, and on behalf of the First National Bank of York, Nebraska, being one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing amendment to the petition, subscribed by said The First National Bank of York, Nebraska, are true.

Before me a notary public, this 21st day of October, A. D. 1901.

[NOTARIAL SEAL.] E. A. GILBERT,
Notary Public.
(Official character.)

11 My commission expires Apr. 16, 1907.

(Endorsed:) No. 622—United States of America, district of Colorado—In the district court of the United States—In the matter of John P. Klug, in bankruptcy—Amendment to creditors' petition—Filed Oct. 23, 1901, 12.05 p. m. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. In Bankruptcy.

Now comes John P. Klug, alleged bankrupt, and for an answer to the petition as well as the amendment to the petition of the First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, to have the said John P. Klug declared an involuntary bankrupt, alleges:

First. Admits that he has for the greater portion of six months next preceding the date of the filing of said petition had his principal place of business and resided at or near Evans in the county of Weld, State and district of Colorado, and that he owes debts to the amount of a thousand dollars.

12 Second. Denies that the petitioners in said petition are creditors of said John P. Klug having provable claims amounting to the aggregate, in excess of securities held by them of $500; but alleges the fact to be that upon an accounting between the said petitioners and said John P. Klug for the securities and property received by them there will be found no indebtedness whatsoever from the said John P. Klug to the said petitioners.

Third. Denies that he is insolvent, or that within four months next preceding the date of the filing of said petition he committed any act or acts of bankruptcy whatsoever.

Admits that on or about the 20th day of May, 1891, he conveyed to Charles H. Wheeler by chattel mortgage 81 head of cattle for the consideration of $2,000, but denies that he was insolvent at the time of making said chattel mortgage, or that the said chattel mortgage was made to hinder, delay, or defraud any creditor or creditors of his, or with intent to prefer the said Charles H. Wheeler over any other creditor or creditors.

Admits that he conveyed to said Charles H. Wheeler by warranty deed on the 14th day of May, 1891, 320 acres of land with the water rights in Weld county for the consideration of $2,500, but expressly denies that he was insolvent at the time of such conveyance or that said conveyance was made to hinder, delay, or defraud any or all of his creditors, or that the same was made with the intent to prefer one creditor over another.

13 Admits that he, by chattel mortgage dated on the 11th day of May, 1891, conveyed to George W. Miller 200 head of horses to secure the sum of $5,500, but denies that he was insolvent at the time of making such mortgage, or that the same was made with the intent to hinder, delay, or defraud any creditor or creditors of his, or that the same was made with intent to prefer one creditor over another.

Denies that he is now or was at the time of filing the creditors' petition herein, or that he has been for three and a half years last past, or for any length of time whatsoever, engaged chiefly in the business of dealing in or buying or selling cattle or horses at any place whatsoever, or that he is not now or that he was not at the time of filing of the creditors' petition herein, or that he has not been for three and a half years last past or for any part of said time a wage-earner or engaged chiefly in farming or the tillage of the soil.

For a second and further answer to the said petition and amendment thereto alleges: That he is now and was at the time of the filing of the petition and amendment thereto in this matter, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil, and therefore cannot be adjudged an in-

voluntary bankrupt under the purview of the statute providing for involuntary bankruptcy.

C. C. BROWN,
Attorney for the said John P. Klug.
DANIEL SAYER, *Of Counsel.*

14 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

John P. Klug being duly sworn deposes and says; that he has read the foregoing answer and knows the contents thereof, and hereby makes solemn oath that the statements therein contained are true of his own knowledge, except as to the matters and things therein alleged upon information and belief, and that as to those matters he believes it to be true.

JOHN P. KLUG.

Subscribed and sworn to before me this 28th day of October, A. D. 1901.

My commission expires June 28th, 1904.

[SEAL.]

GEORGE W. COLE,
Notary Public.

(Endorsed:) 622—In the district court of the United States for the district of Colorado—In the matter of John P. Klug, in bankruptcy—Answer of respondent—Filed Oct. 28, 1901, 11.50 a. m. Charles W. Bishop, clerk—C. C. Brown, attorney for said John P. Klug, —— —— of counsel.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. No. 622. In Bankruptcy.

15 *The Replication of the Petitioning Creditors to the Answer of Charles H. Wheeler Herein.*

Come now The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, and repliants saving and reserving unto themselves now and at all times hereafter, all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of Charles H. Wheeler herein, for replication thereunto say:

That they do and will aver, maintain, and prove their said petition to have John P. Klug adjudged an involuntary bankrupt herein to be true, certain, and sufficient in law to be answered unto

by the said Charles H. Wheeler, and that the said answer of the said Charles H. Wheeler is uncertain, untrue, and insufficient in law to be replied to by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct and humbly pray, as in and by their said petition herein they have already prayed.

THE FIRST NATIONAL BANK OF DENVER, COLORADO,
16 THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
HARRIS AND COMPANY,
Of Denver, Colorado, Petitioners,
By HODGES, WILSON AND HODGES,
Their Attorneys.

(Endorsed:) No. 622—In the United States district court, district of Colorado—In the matter of John P. Klug, in bankruptcy—Replication to answer of Charles H. Wheeler—Filed Nov. 2, 1901, 3.15 p. m., Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court of the United States for the District of Colorado.

In the Matter of JOHN P. KLUG. No. 622. In Bankruptcy.

The Replication of the Petitioning Creditors to the Answer of John P. Klug Herein.

Come now The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company of Denver, Colorado, petitioners named in the creditors' petition to have John P. Klug adjudged an involuntary bankrupt, and repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of advantage of exception which
17 may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of John P. Klug herein, for replication thereunto say:

That they do and will aver, maintain, and prove their said petition to have said John P. Klug adjudged an involuntary bankrupt herein to be true, certain and sufficient in law to be answered unto by the said John P. Klug; and that the said answer of the said

John P. Klug is uncertain, untrue, and insufficient in law to be replied to by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said petition herein they have already prayed.

THE FIRST NATIONAL BANK OF DENVER, COLORADO,
THE FIRST NATIONAL BANK OF YORK, NEBRASKA,
HARRIS AND COMPANY,
Of Denver, Colorado.
Petitioners,
By HODGERS, WILSON AND HODGES,
Their Attorneys.

(Endorsed:) No. 622—In the United States district court, district of Colorado—In the matter of John P. Klug, in bankruptcy—Replication to answer of John P. Klug—Filed Nov. 2, 1901, 18 3.15 p. m. Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

Forty-seventh Day, November Term.

MONDAY, *January 20th, A. D.*, 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. 622. In Bankruptcy.

At this day come The First National Bank and others, petitioning creditors, by George L. Hodges, Esquire, their attorney, and the respondent, by C. C. Brown, Esquire, his attorney, also comes. And thereupon comes a jury, to wit:

Conrad Frick	Henry Kneisel	George Stobbs
Charles B. Clark	James Bartle	George Tuck
Frederick O. Vaille	William Wise	Thomas W. Rayburn
Charles E. Allen	C. N. Priddy, and	Edward Wilson.

twelve good and lawful men, and they are each duly selected and tried and empanelled and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence. And thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

And the said jurors being now each duly cautioned by the court

not to converse among themselves, or with others touching
19 this cause, or the evidence heard or any part thereof, nor to listen to such conversation of others, are permitted to retire to meet the court at its next incoming.

Forty-eighth Day, November Term.

TUESDAY, *January* 21*st*, *A. D.* 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. 622. In Bankruptcy.

At this day come again the parties in this matter by their attorneys respectively, and the jurors heretofore duly empanelled and sworn in this matter being now all here present and in the jury-box the trial of the issues herein joined is resumed.

And the said jurors having heard the evidence produced herein and being thereto duly instructed by the court, upon their oath do say they find the issues herein joined for the respondent, and that he is a farmer within the meaning of the bankrupt act.

Wherefore, it is considered by the court that the petition for adjudication herein be and the same is hereby dismissed out of this court, and that the respondent go hence hereof without day, and have and recover of and from the petitioning creditors his costs by him in this behalf laid out and expended to be taxed, and have execution therefor.

20 And thereupon, the petitioning creditors pray an appeal to the United States circuit court of appeals for the eighth circuit which is allowed to them, but upon the condition nevertheless that they give bond on such appeal in the sum of two hundred and fifty dollars ($250.00).

UNITED STATES OF AMERICA, *District of Colorado*, } *ss*:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

Findings of Fact and Conclusions of Law.

The above-entitled matter coming on to be heard specially upon the issues joined therein, upon the petition and amendment to the petition of the First National Bank of Denver, Colorado, the First National Bank of York, Nebraska, and Harris and Company (incorporated), and the answer of the said John P. Klug thereto, wherein the said petitioners aver that the said John P. Klug is not, and was not at the time of filing of the said petition, and had not been for three and one-half years prior thereto, a wage-earner nor engaged chiefly in farming or the tillage of the soil; and the said respond-

ent, by his said answer, denies the said allegations, thereby raising the issue as to whether or not this court hath jurisdiction to try the issues joined by the said petition and answer as to the
21 alleged acts of bankruptcy and insolvency therein set up and denied; and the court having called a jury for the purpose of trying the said issue, under its directions and instructions, and having heard the evidence introduced on behalf of said petitioners and in support of the said allegations of the said petition, that the said respondent was not and had not been for a period of three and one-half years a person engaged chiefly in farming or the tillage of the soil; and upon motion and application of counsel for said respondent that the court instruct the said jury to find said issue for the respondent, and to dismiss the said petition; and as well upon the request of counsel for petitioners, that the court instruct the said jury "that the word 'farming' as used in the act under consideration (bankrupt act 1898, section 4, *b*) is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil, is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops" and the court having considered the said evidence, and the arguments of counsel in support of the said motions or requests to instruct the said jury; and in pursuance of the requirements of the third paragraph or subdivision of rule or order XXXVI
22 of the General Orders in Bankruptcy, promulgated by the Supreme Court of the United States at the October term A. D. 1898 of said court, doth make the following its findings of fact and conclusions of law with respect to the said issues tried as aforesaid.

Facts.

1. That John P. Klug, the respondent, has been for more than ten years last past, a resident of Weld county, Colorado, and during such time has lived upon a tract of land secured from the United States under and through the homestead and pre-emption laws.

2. That from time to time, during such period, the respondent acquired other lands, until at the time of the institution of these proceedings, he owned about 2,000 acres of land in contiguous tracts in Weld county, Colorado.

3. That the respondent has placed improvements upon these lands until at the time of the institution of these proceedings they consisted chiefly of a dwelling-house, barn, cattle sheds, and corrals, wells, windmill, watering holes, and sixty miles of fencing. The fence being principally of two strands of wire, some little with three strands, and rather inferior posts.

4. That in addition to the 2,000 acres of land owned by said respondent, he had, under lease from railroads and the State of Col-

orado (school sections) and unoccupied lands, a more or less enclosed range of about 18000 acres.

5. That during the year 1900, the respondent purchased a
23 tract of land containing about 150 acres, 80 acres of which were under cultivation, principally in alfalfa, a few acres in oats. This land was sold in the spring of the year 1901.

6. That in the year 1900 the respondent leased a tract of 35 or 40 acres of land, under cultivation in alfalfa.

7. That the larger tract of land above mentioned was mostly what is known as "grazing land." That from 400 to 700 acres of said tract stood in wild hay, a large part of which being hay known as "blue joint," superior in quality to ordinary wild hay.

8. That the larger tract of land referred to had no water rights in connection therewith, and was not irrigated. That the crop of wild hay mentioned, depended wholly upon floods and waterspouts, in the spring, coming down a dry creek called the "Box Elder." That these floods and waterspouts were irregular in time and quantity. That some seasons they were extensive—a good crop of wild hay resulting; at other times, the floods were small—with a consequent diminution in the size of the hay crop. That the hay crop grown upon this tract depended solely upon such natural conditions.

9. That the 80 acres of the tract purchased by the respondent in 1900, and the 35 or 40 acres leased in the same year, was in alfalfa and was irrigated.

10. That the average crop of wild hay from the wild-hay land was from 200 to 400 tons according to the season, and the amount of land covered by the floods.

24 11. That from the 80 acres of the tract of land purchased in 1900, there *was* cut about 125 tons of alfalfa, and from the 35 or 40 acres of leased land, about 75 tons of alfalfa.

12. That on the larger tract of land referred to, attempts were made by the respondent to cultivate 10 or 15 acres of land, in a garden, and some small grains. The grain crop did not amount to anything and cattle were permitted to eat it off the ground. Some watermelons and pumpkins were produced in the garden.

13. The implements which were owned by the respondent consisted of one plow, mower, several hay rakes, and other implements for cutting and stacking hay, and several wagons.

14. That for a period of three years and more, prior to the institution of these proceedings, the respondent kept upon the large tract of land referred to at all times, a large number of horses, varying from 500 to 700 head.

15. That during the same period, the respondent kept upon said tract of land a herd of cattle averaging about 2,000 head, the greater number of which were cows.

16. That in addition to the grazing facilities on said tract of land, and the wild and cultivated hay grown thereon, the respondent purchased large quantities of feed for the stock above mentioned, in one year having purchased as much as 1700 tons of hay and several car-loads of grain.

17. That in addition to running the horses and cattle on
25 the tract of land above referred to, the respondent had been engaged during the three years immediately preceding the institution of these proceedings in buying and selling cattle, the transactions in the aggregate amounting to about 1,000 to 1,200 head.

18. That the respondent held himself out to the world, by means of advertisements on letter-heads and stationery used in his correspondence, to be a dealer in, as well as a breeder of cattle and horses.

19. That, from the evidence, it appears that the respondent was *not* chiefly engaged in the tillage or the cultivation of the soil, and that the horses and cattle kept and *feed* by him were not sustained chiefly by the wild and cultivated hay crops produced from said tracts of land above referred to.

20. That the respondent is chiefly engaged in the buying, selling, breeding, and raising of horses and cattle. That said horses and cattle were grazed upon the said tract of land belonging to respondent, and upon the adjacent leased and public ranges, and were *feed* with the wild and cultivated hay crops produced from said land and with hay and grain purchased from others, in quantity and value in excess of the crops produced from said land.

Conclusions of Law.

1. That the keeping and growing of cattle, sheep, horses, hogs, chickens, and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from
26 *sealing* in, buying, and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used.

2. That the word "farming" in the bankruptcy act of 1898, is something more than tilling the soil, and includes and comprehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit-growers, vine-growers, and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature, or by cultivation, it is still farming.

3. That the word "farming" and the phrase "the tillage of the soil" connected by the disjunctive particle "or" in the association in which they occur in the bankrupt act of 1898, are not synonomous they do not have the same meaning, nor does the phrase "the tillage of the soil" in such association serve to limit the meaning of

the word "farming" so as to mean farming by the tillage of the soil.

4. That in view of the conclusions above expressed the re-
27 spondent is a farmer and "engaged chiefly in farming" within the meaning of section 4*b* of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court, therefore, has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein.

5. That the inst-uction requested by counsel for petitioners is refused, and the jury is instructed, upon the testimony, to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898, and the petition is dismissed at cost of petitioners.

MOSES HALLETT,
Dist. Judge.

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Findings of fact and conclusions of law—Filed February 17th, 1902, at 10 o'clock a. m. as of January 21st, 1902, by direction of district judge, Charles W. Bishop, clerk U. S. district court, district of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

The First National Bank of Denver, Colorado; The First
28 National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, the petitioners in the matter above entitled, conceiving themselves aggrieved by the order of the said court entered therein on January 21st, A. D. 1902, dismissing their petition for the adjudication of said John P. Klug as an involuntary bankrupt, do*th* hereby appeal from said order to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record and papers consisting of the pleadings, the judgment or decree dismissing said petition, and the finding of facts and conclusions of law in said proceedings, duly authenticated, may be sent to the Supreme Court of the United States.

HODGES, WILSON AND HODGES,
Attorneys for Petitioners and Appellants,
603–'7 *Ernest and Cranmer Building, Denver, Colorado.*

Denver, Colorado, February 5th, A. D. 1902.

And now, to wit, on —— — A. D. 1902, it is ordered that the appeal be allowed as prayed for, and bond on said appeal is fixed at the sum of — dollars ($—).

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Prayer for appeal—Filed Feb'y 5, 1902, at 10.05 o'clock a. m., Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors, 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

29 Sixty-first Day, November Term.

WEDNESDAY, *February 5th, A. D.* 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the fifth day of November, A. D. 1901.

In the Matter of JOHN P. KLUG. In Bankruptcy. 622.

At this day come the First National Bank of Denver, and others, petitioning creditors, by George L. Hodges, Esquire, their attorney, and thereupon, on his motion, it is ordered by the court that so much of the order of the court heretofore and on, to wit, the twenty-first day of January, A. D. 1902, entered herein, as allows an appeal to the United States circuit court of appeals for the eighth circuit, be and the same is hereby vacated, set aside, and for naught held.

And thereupon the First National Bank of Denver, and others, petitioning creditors, pray an appeal to the Supreme Court of the United States from the order of the court dismissing the petition for adjudication herein. Which appeal is hereby allowed to them but upon the condition, nevertheless, that said petitioning creditors give bond on such appeal in sum of two hundred and fifty dollars ($250.00).

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

30 *Assignment of Errors.*

Come now The First National Bank of Denver, Colorado; The First National Bank of York, Nebraska; and Harris and Company, (incorporated) the petitioners in the matter above entitled, to have the said John P. Klug adjudged an involuntary bankrupt, and aver that in the record and proceedings in said above-entitled proceedings the court committed manifest errors to the detriment and injury of the said petitioners, in the following particulars, to wit:

First. The court erred in its first conclusion of law, in holding "that the keeping and growing of cattle, sheep, horses, hogs, chickens, and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from dealing in, buy-

ing, and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used."

Second. The court erred in its second conclusion of law in holding "that the word 'farming' in the bankruptcy act of 1898, is something more than tilling the soil, and includes and com-
31 prehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit-growers, vine-growers and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature or by cultivation, it is still farming."

Third. The court erred in its third conclusion of law in holding "that the word 'farming' and the phrase 'the tillage of the soil' connected by the disjunctive particle 'or' in the association in which they occur in the bankrupt act of 1898, are not synonomous—they do not have the same meaning, nor does the phrase 'the tillage of the soil' in such association serve to limit the meaning of the word 'farming' so as to mean farming by the tillage of the soil."

Fourth. The court erred in its fourth conclusion of law in holding "that in view of the conclusions above expressed, the respondent is a farmer and 'engaged chiefly in farming' within the meaning of section 4*b* of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court therefore has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein."

Fifth. The court erred in its conclusions of law as applied to the facts found, that the respondent is not subject to be adjudged
32 an involuntary bankrupt.

Sixth. The court erred in holding that it had no jurisdiction in said proceeding to try the issues of insolvency and bankruptcy raised by the petition and answer therein.

Seventh. The court erred in refusing to instruct the jury in accordance with the request of petitioners' counsel, "that the word 'farming' as used in the act under consideration, is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil,' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

Eighth. The court erred in instructing the jury to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898.

Ninth. The court erred in dismissing petitioners' petition herein to have the said John P. Klug adjudged an involuntary bankrupt.

Tenth. The court committed manifest errors in divers other particulars, as appears upon the record in said proceedings, to the detriment and injury of said petitioners therein.

33 Wherefore, said petitioners pray that said order, judgment, and decree may be wholly reversed, set aside, and for naught held.

HODGES, WILSON AND HODGES,
Attorneys for Petitioners.

(Endorsed:) No. 622—In bankruptcy—United States of America district of Colorado—In the district court—In the matter of John P. Klug—Assignment of errors—Filed Feb. 21, 1902, 3.30 p. m., Charles W. Bishop, clerk—Hodges, Wilson, and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents, that we, the First National Bank of Denver, Colorado, as principal, G. E. Ross-Lewin and Thomas Keeley, as sureties, are held and firmly bound unto John P. Klug of Weld county, Colorado, in the full and just sum of two hundred and fifty dollars ($250.00), to be paid to the said John P. Klug, his heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of February in the year of our Lord one thousand nine hundred and two.

Whereas lately at the November term, A. D. 1901, of the
34 district court of the United States, for the district of Colorado, in bankruptcy, sitting at Denver, in a proceeding in bankruptcy pending in said court, wherein The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, were petitioning creditors, and John P. Klug was respondent, and one Charles H. Wheeler appeared and answered said creditors' petition, to have said John P. Klug adjudged an involuntary bankrupt, judgment, order or decree was rendered and entered against the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, petitioning creditors, dismissing their petition; and the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company (incorporated) of Denver, Colorado, having prayed and been allowed, an

appeal to the Supreme Court of the United States to reverse the judgment, order, or decree of the said district court; and a citation directed to the said John P. Klug, and the said Charles H. Wheeler, citing and admonishing them to be and appear in the Supreme Court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris and Company
35 (incorporated) of Denver, Colorado, shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

THE FIRST NAT. BANK OF DENVER,
By G. E. ROSS-LEWIN, *V. Pres.* [SEAL.]
GEORGE E. ROSS-LEWIN. [SEAL.]
THOMAS KEELEY. [SEAL.]

Sealed and delivered in presence of—
D. EDGAR WILSON.

Attest:

[Seal First Nat. Bank.]
THOMAS KEELEY, *Sec'y.*

Approved: Feb'y 21st, 1902.

MOSES HALLETT, *Judge.*

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

G. E. Ross-Lewin and Thomas Keely, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate in Arapahoe county, Colorado, the sum below set opposite his name, that is to say:

As to each, five hundred dollars, over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

GEORGE E. ROSS LEWIN.
THOMAS KEELEY.

Subscribed and sworn to before me at Denver, this 21st day of February, A. D. 1902

My commission expires Feb. 7, 1904.

[NOTARIAL SEAL.] C. S. HAUGHWOUT,
Notary Public.

36 (Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Appeal bond—Filed Feb. 21, 1902, 3.30

p. m., Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for — 603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the District Court.

In the Matter of JOHN P. KLUG. In Bankruptcy.

The clerk of the district court of the United States for the district of Colorado, Denver, Colorado:

You will please prepare a transcript of the following papers filed and of record in the above-entitled cause, for an appeal of the above-entitled cause, by the petitioning creditors therein, to the Supreme Court of the United States:

Creditors' petition,
Amendment to creditors' petition,
Answer of John P. Klug,
Answer of Charles Wheeler;
Replication to answer of John P. Klug,
Replication to answer of Charles Wheeler,
37 Judgment or decree,
Findings of fact and conclusions of law,
Prayer for an appeal, and order of allowance,
Appeal bond,
Assignment of errors,
Citation.

HODGES, WILSON AND HODGES,
Attorneys for Petitioning Creditors.

(Endorsed:) No. 622—In bankruptcy—United States of America, district of Colorado—In the district court—In the matter of John P. Klug—Præcipe for transcript—Filed Feb. 26, 1902, 1.45 p. m. Charles W. Bishop, clerk—Hodges, Wilson and Hodges, attorneys for petitioning creditors—603–607 Ernest and Cranmer building, Denver, Colorado, telephone 1463.

38 *Citation on Appeal.*

U. S. Circuit Court of Appeals.

UNITED STATES OF AMERICA, *Eighth Judicial Circuit,* } ss:

In the Supreme Court of the United States.

The United States of America to John P. Klug and Charles H. Wheeler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty

days from and after the day this citation bears date, pursuant to an appeal allowed by the district court of the United States for the district of Colorado, sitting at Denver, in the matter of John P. Klug in bankruptcy, wherein The First National Bank of Denver, Colorado, The First National Bank of York Nebraska and Harris & Company of Denver are appellants and you are appellees to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 21st day of February, A. D. 1902.

[Seal United States District Court, District of Colorado.]

MOSES HALLETT, *Judge.*

Attest: CHARLES W. BISHOP, *Clerk.*

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } ss:

On this 3d day of March A. D. 1902, personally appeared Dewey C. Bailey, Jr., before me, the subscriber, clerk of the circuit court of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Cortland C. Brown, attorney for the appellees.

DEWEY C. BAILEY, JR.,
Dep. U. S. Marshal.

Sworn to and subscribed before me this 3d day of March, A. D. 1902.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY,
Clerk U. S. Circuit Court.

[Endorsed:] C. C. Brown No. 622 #1415 Supreme Court of the U. S. In the matter of John P. Klug In bankruptcy Citation. Filed in district court of the United States for the district of Colorado, this 3rd day of March A. D. 1902, 10.45 a. m. By Charles W. Bishop, clerk. Hodges, Wilson and Hodges, attorneys for petitioning creditors.

39 UNITED STATES OF AMERICA, *District of Colorado.* } ss:

I, Charles W. Bishop, clerk of the district court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to thirty-seven (37), both inclusive, to be a true, perfect, and complete transcript and copy of

the creditors' petition, amendment to creditors' petition, answer of John P. Klug, answer of Charles Wheeler, replication to answer of John P. Klug, replication to answer of Charles Wheeler, judgment or decree, findings of fact and conclusions of law, prayer for an appeal and order of allowance, appeal bond, assignment of errors and præcipe for transcript, heretofore entered of record or filed in said court, and in the matter of John P. Klug, in bankruptcy, in said court, as fully and completely as the same still remain on file or of record in my office. at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this third day of March, A. D. 1902.

[Seal United States District Court, District of Colorado.]

CHARLES W. BISHOP, *Clerk.*

Endorsed on cover: File No. 18,452. Colorado—D. C. U. S. Term No. 599. The First National Bank of Denver Colorado, The First National Bank of York Nebraska & Harris & Company—appellants—*vs.* John P. Klug and Charles H. Wheeler— Filed March 17, 1902.